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SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN THE MATTER OF:

Emergency Order Regarding the
Abrogation of Certain Consumptive
Use Permit Timeframes for
Agricultural Irrigation Water Users
_____ /

SFWMD Order No. 2004-184 DAO

FINAL ORDER OF GOVERNING BOARD
CONCURRENCE WITH EMERGENCY ORDER

This cause, having come before the Governing Board of the South Florida Water Management District ("District"), at its meeting of October 13, 2004 for entry of a Final Order, and upon staff's recommendation, and being fully informed otherwise, the Governing Board issues this Order of Concurrence containing the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 24, 2004, the Executive Director executed an "Emergency Order re: Abrogation of Time Requirements and Deadlines for Processing and Action on Consumptive Use Permit Applications, Extension of Irrigation Permit Expiration Basin Dates, and Suspension of Monitoring Requirements and Withdrawal Facility Calibration Requirements for Consumptive Use Permits and Permit Applications, for the Agricultural Irrigation Water Users within Portions of the South Florida Water Management District" in response to the major damage experienced by agriculture within the entire District jurisdiction from the recent

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hurricanes. A copy of the Emergency Order, SFWMD Order No. 2004-173 DAO, is attached hereto, and incorporated herein by reference as Exhibit A.

2. The emergency order identified above was issued in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from the devastation wrought by Hurricanes Charley, Frances, Ivan and Jeanne.

3. Based upon the various timeframes in the emergency order, the emergency order should expire on October 31, 2005.

CONCLUSIONS OF LAW

4. Section 373.119(2), Florida Statutes, authorizes the Executive Director to issue emergency authorizations whenever the Executive Director, with the concurrence and advice of the governing board, finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare; the health of animals, fish or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses, requiring that such action be taken as the Executive Director deems necessary to meet the emergency.

5. The Executive Director is authorized to execute this final order pursuant to the delegation of authority set forth in South Florida Water Management District Policies and Procedures, §101.22(b).

NOTICE OF RIGHTS

Any party substantially affected by this Order has the right to seek judicial review of it under section 120.68, Florida Statutes, by filing a notice of appeal

under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the District at 3301 Gun Club Road, West Palm Beach, Florida 33406, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the District.

ORDER

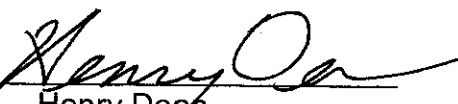
- A. The Governing Board concurs with the Executive Director's Emergency Order identified herein.
- B. The emergency order shall expire on October 31, 2005.

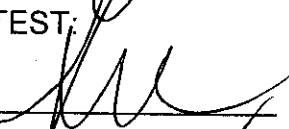
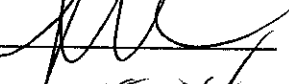
DONE AND SO ORDERED at West Palm Beach, Florida, on this 13th day

of October 2004, in West Palm Beach, Florida.



**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT**

By: 
Henry Dean
Executive Director

ATTEST: 
By: 
On: 10-15-04

Legal Form Approved

by: 

STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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30. FLA. WATER
MGT. DISTRICT

SFWMD ORDER NO. 2004-173DAO

Emergency Order Re: Abrogation of Time Requirements and Deadlines for Processing and Action on Consumptive Use Permit Applications, Extension of Irrigation Permit Expiration Basin Dates, and Suspension of Monitoring Requirements and Withdrawal Facility Calibration Requirements for Consumptive Use Permits and Permit Applications, for the Agricultural Irrigation Water Users within Portions of the South Florida Water Management District

EMERGENCY ORDER

Under the authority of the State of Florida Executive Orders No. 04-192 and No. 04-206, and Sections 120.569(2)(n), 252.36, and 373.119(2), Florida Statutes, the Executive Director of the South Florida Water Management District ("District") enters this Emergency Order (Order), including Findings of Fact and Conclusions of Law, applying to the agricultural irrigation water users, as defined herein, that have experienced significant adverse economic impacts due to Hurricanes Charley, Frances, Ivan and Jeanne (hereinafter "the Hurricanes"), for abrogation of time requirements and deadlines for processing consumptive use permit applications, extension of irrigation permit expiration basin dates for identified basins, and suspension of monitoring requirements and withdrawal facility calibration requirements for consumptive use permits and applications, within the District (hereafter "affected areas").

EXHIBIT A

Findings of Fact

1. On August 10, 2004, the Governor issued Executive Order 04-182 to declare a state of emergency because of Hurricane Charley.
2. On August 13, 2004, Hurricane Charley struck the southwest coast of Florida as a Category 4 hurricane causing widespread damage to the agricultural irrigation users within the District in Charlotte, Collier, Lee, Hendry, Glades, Polk, Highlands, Orange and Osceola counties.
3. In response to Hurricane Charley the District issued Emergency Order No. 2004-145 DOA declaring a state of emergency and addressing emergency repair, replacement, restoration and certain other measures made necessary by that hurricane.
4. While responding to Hurricane Charley, another hurricane named Frances hit the southeast coast of Florida on September 4th and 5th. Hurricane Frances was a very large Category 2 hurricane that proceeded west and northwest through the District. Hurricane Frances caused widespread damage throughout the SFWMD including Broward, Palm Beach, Martin, St. Lucie, Highlands, Okeechobee, Osceola, Orange and Polk counties. The damage suffered by agriculture included loss of crops and damage to processing and packaging facilities, irrigation systems and withdrawal facilities associated with consumptive use permits issued by the District.
5. Preliminary damage estimates prepared by the Florida Department of Agriculture and Consumer Services place the statewide cost of Hurricanes

Charley and Frances to over \$2.1 Billion. Much of this damage from Hurricanes Charley and Frances was sustained within the boundaries of the District.

6. In most of the affected area, because of the extent of damage to crops and withdrawal irrigation systems, it may take up to one year before system repairs and crop replacements will be completed. During this recovery period, the needs of water users will be affected and vary as decisions are made regarding replanting and irrigation system replacement and repair. In general, the time needed to replace crops and repair irrigation systems for agricultural irrigation uses is significantly longer than for other irrigation industries where repairs can be made quickly and with less expense.

7. In preparation for Hurricane Frances, the Governor issued Executive Order No. 04-192. In addition to again declaring a state of emergency, the order incorporated Executive Order 04-182 and extended the expiration of the previous order to coincide with the expiration of Executive Order 04-192 (October 31, 2004).

8. Executive Order 04-192 also found that the special duties and responsibilities of some agencies in responding to disasters may require them to deviate from the statutes and rules they administer. More specifically, under Section 8.F. of the order the Governor gave all agencies of the state, which includes the District, the authority to abrogate the legal time requirements, notice requirements, and deadlines for final action on applications for permits and other approvals when such applications are deemed to be approved unless disapproved in writing by specified deadlines. The Governor concluded by

declaring that all such time requirements that had not expired as of the date of the order (September 1, 2004) were "extended and tolled to the extent needed to meet this emergency."

9. In response to Hurricane Frances the District issued two more emergency orders. District Order No. 150 DAO is similar to District Order 145, addressing repairs, replacement, restoration and other measures, now necessary to address Hurricane Frances. District Order No. 151 streamlines approvals to more quickly address flooding problems. Both orders have the District staff doing field authorizations to address hurricane impact problems.

10. In preparation for the next hurricane that hit Florida, Hurricane Ivan, the Governor issued Executive Order No. 04-206. In this order the Governor declared a state of emergency again, now because of the combination of all three hurricanes, Charley, Frances and Ivan. The Governor incorporated Executive Order 04-192 (Frances order) into this order, and extended the expiration date of Executive Order 04-192 to the expiration date of this order (November 9, 2004). Also, as in Executive Order 04-192, the Governor again declared that time requirements, notice requirements, and deadlines for final action on applications for permits and other approvals are suspended and tolled to the extent needed by this emergency.

11. As of the date of this Emergency Order, Hurricane Jeanne, currently a Category 2 hurricane, has a projected course including probabilities of either direct landfall or closely skirting the east coast of Florida, and execution of an emergency declaration by the Governor is currently pending.

12. Pursuant to Part II of Chapter 373, Florida Statutes, and implementing rules, including Rule 40E-2.301, F.A.C., and the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District" (Basis of Review), incorporated by reference in Rule 40E-2.091, F.A.C., conditions for renewal and expiration of water use permits, monitoring requirements and facility calibration requirements are imposed.

13. With regard to individual and major Standard General Water Use Permits for the Irrigation Use Class, specific irrigation permit expiration basins, and basin application dates are assigned pursuant to Section 1.7.3 of the Basis of Review.

14. Specifically, Individual and major Standard General Water Use Permits for the Irrigation Use Class are specified in Section 1.7.3.3. D. of the Basis of Review. Consumptive use permittees for agricultural irrigation uses within Upper East Coast Irrigation Permit Expiration Basin C, as identified in Section 1.7.3.5(7), F.A.C., (Figure 1) are currently without adequate resources to meet the permit renewal requirements imposed by the applicable Irrigation Permit Expiration Basin Date of October 30, 2004.

15. Several applications for permit renewal of agricultural irrigation uses within the affected area are currently under agency review, as identified in Section 1.7.3.5 (7), F.A.C. (Figure 1) Thus, the time constraints detailed in Rule 40E-1.603, F.A.C., are applicable. Specifically, this rule provides time-frames for response to District requests for additional information. These time-frames may not be adhered to as a result of addressing hurricane impacts. It is recognized

that as a result of the damage incurred by the Hurricanes, additional time is needed for agricultural irrigation permit applicants who have experienced significant adverse economic impacts to recover and assess the changes to their agricultural operations that will affect their needs and use of water.

16. Section 4.1 of the Basis of Review requires all water use accounting systems to be calibrated as part of the permit application and that monthly withdrawals from each permitted facility be calculated monthly and reported quarterly. As a result of the damage incurred by the Hurricanes, many of the withdrawal facilities will need to be replaced or modified making reporting water use data a hardship until replacement facilities or repairs are complete.

17. Due to destruction of crops and many agricultural irrigation and water withdrawal facilities within the affected area, the ability of certain agricultural irrigation users to comply with existing requirements in Section 4.1 of the Basis of Review, for calibration of withdrawal facilities prior to permit renewal, is greatly impacted. District staff has recommended agricultural irrigation use permit applicants within the affected area that have experienced significant adverse economic impact be permitted to provide calibration documentation after renewal of their existing permit within a reasonable time period not to exceed eighteen months, thus waiving the existing rule requirement.

18. Also, due to the destruction of crops and damage to many agricultural irrigation and water withdrawal facilities, the ability of agricultural irrigation users who have experienced significant adverse economic impacts to

comply with periodic monitoring requirements in their existing consumptive use permits is greatly impacted.

19. Significant effort over the next year will be made by these agricultural irrigation users to reestablish their crops and associated consumptive use operations to recover from the Hurricanes. Imposition of the above referenced permit expiration date, calibration requirements, and monitoring requirements by the District on the identified consumptive use permittees as a result of the Hurricanes would create additional undue hardships, exacerbating this extremely difficult situation.

20. It is also recognized, however, that some agricultural irrigation users within the affected areas may have received only minor or moderate damage that did not result in significant adverse economic impacts. In other cases, recovery from the damage affecting water use may take less than one year. The relief from monitoring requirements is not warranted in such cases or for the full year in others cases. Agricultural irrigation users who have had significant adverse impacts should comply with monitoring requirements of their existing consumptive use permits when they have adequately recovered from any significant adverse economic impacts from the Hurricanes.

21. For purposes of this Order, "agricultural irrigation uses" include permitted users of water for commercial production of crops or the growing of farm products including but not limited to vegetables, citrus, and tropical fruits, pasture, dairy, nursery stock, sugar cane, rice and sod, and use of water for drinking by or washing of livestock.

Conclusions of Law and Ultimate Facts

22. Based on the findings recited above, it is hereby concluded that emergency conditions have been caused by the Hurricanes and significant adverse economic impacts to certain consumptive use permit holders for agricultural irrigation uses within the affected area has occurred, requiring immediate action to protect the public health, safety, or welfare. Such agricultural irrigation uses in the affected area will experience undue hardship without relief from the above noted requirements.

23. The Executive Director of the District is duly authorized by Section 373.119(2), Florida Statutes, to declare that an emergency exists, requiring immediate action to protect the public health, safety, or welfare and authorizing such action as the Executive Director deems necessary to meet the emergency. Section 120.569(2)(n), F.S., also authorizes issuance of an emergency order when an immediate danger to the public health, safety, or welfare exists.

24. Executive Orders 04-192 and 04-206 suspended and tolled the time requirements, notice requirements, and final action for applications for permits and other approvals that had not expired on September 1, 2004 (the date of Executive Order No. 04-192). The Executive Orders provided that the extent of the suspension and tolling is to be as needed to meet the emergency caused by the Hurricanes. The Executive Orders gave agencies such as the District the authority to take formal action by emergency rule or order to cope with the emergency.

THEREFORE, IT IS ORDERED:

Based on the above findings of fact and conclusions of law, the Executive Director enters this Order and finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare of agricultural irrigation uses, as defined herein. Thus, the following is authorized for the purpose of preventing imposition of additional undue hardship for the specified agricultural irrigation users:

1. The time deadlines and requirements for conducting and reporting periodic monitoring pursuant to consumptive use permit limiting conditions for agricultural irrigation uses within the affected area who have experienced significant adverse economic impacts are hereby suspended until such monitoring can be reasonably reinstated after recovery from the effects of the Hurricane, not to exceed one (1) year from the date of this Order. The suspended requirements include those for monitoring of water quantity, saline water, and water level monitoring within wetlands and other surface waters.
2. The permit expiration date for Individual and major Standard General Water Use Permits within the Upper East Coast Irrigation Permit Expiration Basin C, set forth in Section 1.7.3.3. D. of the Basis of Review, for the agricultural irrigation uses, as defined herein, is extended from October 30, 2004 until to October 30, 2005. Notwithstanding the extension of the permit expiration date, permittees are encouraged to continue to file and complete their permit applications so that final action by the District to issue or renew their permits can occur as soon as possible.

3. All time requirements, notice requirements, and deadlines for submission of required information and completion of applications for consumptive use permits for agricultural irrigation uses within the affected area pending before the District and who have experienced significant adverse economic impacts shall be tolled and suspended for a period of (1) year from the date of this Order. Specifically, for such pending applications, the application processing time clocks set forth in Section 120.60, F.S., and Rule 40E-1.603, F.A.C., shall be considered tolled on the effective date of this Order. Notwithstanding the above, permittees are encouraged to continue to file and complete their permit applications as soon as possible so that final action by the District to issue or renew their permits can occur as soon as possible.

4. The requirement for water use permit applicants to provide documentation of the calibration method as part of the permit application for withdrawal facilities set forth in Section 4.1 of the Basis of Review is hereby waived for those agricultural irrigation uses within the affected area that have experienced significant adverse economic impacts. In lieu of this requirement, such permittees shall provide documentation of the calibration method within eighteen (18) months of permit issuance, or as otherwise set forth in the limiting condition in the renewed permit.


NOTICE OF RIGHTS

Any party substantially affected by this Order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the SFWMD at 3301 Gun Club Road, West Palm Beach, Florida 33406, and by filing a copy of the notice of

appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the SFWMD.

DONE AND ORDERED on this 24 day of September, 2004, in West Palm Beach, Florida.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT


Henry Dean
Executive Director

FILED on this date, pursuant to §120.52 Florida Statutes,
with the designated SFWMD Clerk, receipt of which is hereby acknowledged.

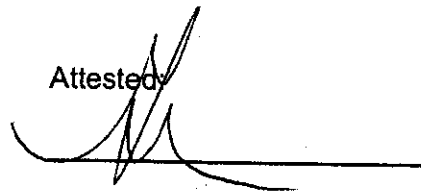
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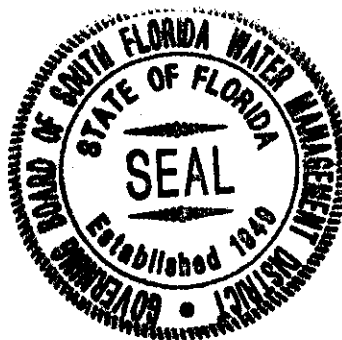
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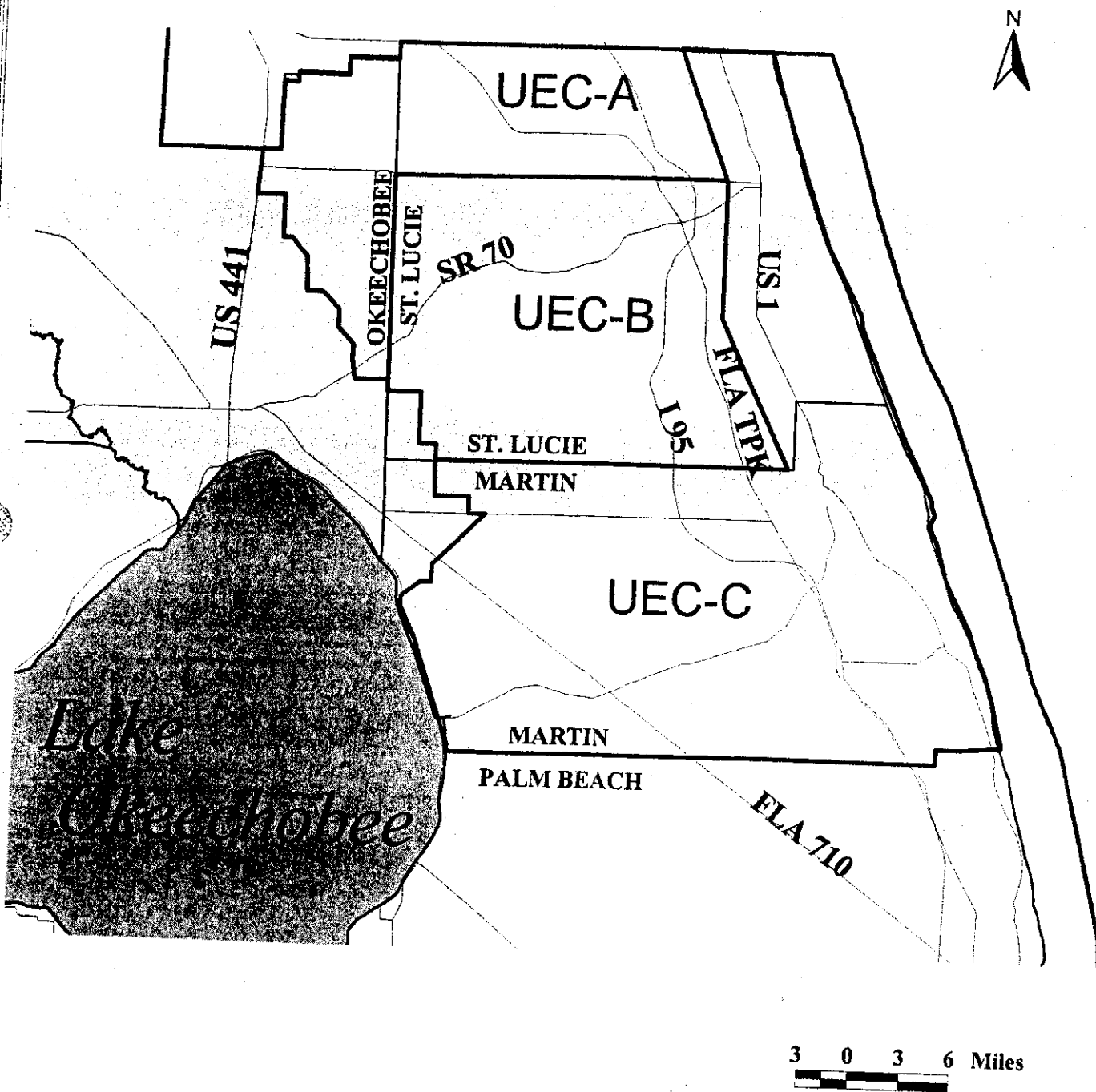
Office of Counsel
South Florida Water Management District

Attested





Water Use Sub-Basins Where Permit Expiration Dates Are Extended By Emergency Order



Note: Basin names refer to descriptions in the Basis of Review for Water Use Applications, Section 1.7.3.3 (amended August 2003)

FIGURE 1